IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

RPFC.No. 432 of 2007()

MC.130/2006 of OF FAMILY COURT, KOTTAYAM
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PETITIONER/COUNTER PETITIONER

V.C.ABRAHAM @ BABU, VATTAKUNNEL HOUSE,
KOTHALA KARA, PAMPADY P.O., KOTTAYAM.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM

RESPONDENTS: PETITIONERS
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1. SARAMMA @ SHEENA BABU,
D/O KURIAKOSE, KIZHAKKEVAZHAKALA HOUSE,
PEROOR KARA, PEROOR VILLAGE, KOTTAYAM.

2. BINISHA ABRAHAM(MINOR),
REPRESENTED BY HER MOTHER SARAMMA @ SHEENA BABU,
KIZHAKKEVAZHAKALA HOUSE, PEROOR KARA,
PEROOR VILLAGE, KOTTAYAM.

3. JINISH ABRAHAM(MINOR),
REPRESENTED BY HIS MOTHER SARAMMA @ SHEENA BABU,
KIZHAKKEVAZHAKALA HOUSE, PEROOR KARA,
PEROOR VILLAGE, KOTTAYAM.

BY ADV. SMT.REENA THOMAS

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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R.P. (FC) NO. 432 of 2007

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Dated: 22-10-2007

ORDER

Heard both sides.

2. The revision petitioner who is the husband of the first respondent and father of respondents 2 and 3 was the counter petitioner in M.C. 130 of 2006 on the file of the Family court, Kottayam at Ettumanoor. He challenges the final order dated 25-04-2007 passed by the Family Court under Sec. 125 Cr.P.C. directing him to pay each of the three respondents a sum of Rs. 500/- per month by way of maintenance with effect from 25-4-2007.

3. A reading of the final order will go to show that the revision petitioner was set ex parte mainly for the reason that he did not comply with the direction for interim maintenance ordered at the rate of Rs. 250/- per month to each of the three respondents. The revision petitioner had filed objections to the M.C.

4. Admittedly, there was no application for interim maintenance. The application for regular maintenance was filed in the year 2006. After the amendment of Section 125 Cr.P.C. by Amending Act 50 of 2001 with effect from 24-09-2001, the third proviso to Sec. 125 (1) Cr.P.C. indicates that the interim maintenance can be granted only on application. Hence, the Family Court was not justified in penalising the revision petitioner by slapping an ex parte order on him for the main reason that he did not comply with the order for interim maintenance. Consequently, the final order passed on 25-04-2007 cannot be sustained and the same is

set aside. However, the revision petitioner cannot have the luxury of a contested trial without paying anything to the respondents. As per the final order, he is liable to pay Rs. 1,500/- per month from 25-4-2007 onwards. Considering the facts and circumstances of the case, the revision petitioner is directed to deposit a sum of Rs. 3,000/- (Rupees three th0ousand only) before the Family Court, Kottayam at Ettumanoor within one month from today whereupon M.C. 130/2006 shall stand restored to file. In that event, the revision petitioner shall entitled to contest the matter by cross-examining P.W.1 by adducing such other evidence as he may deem fit. It shall be open to the respondents to file an application before the Family Court for interim maintenance for the future maintenance pendente lite.

V. RAMKUMAR,
(JUDGE)

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